

OFFICE OF SPECIAL MASTERS

(Filed: January 25, 2007)

DO NOT PUBLISH

CHARLOTTE KEMPER,)	
mother and natural guardian of her son,)	
SULLIVAN KEMPER,)	
)	
Petitioner,)	
)	
v.)	No. 02-1489V
)	Attorneys' Fees; Attorneys' Costs;
SECRETARY OF)	Personal Expenses
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES, ATTORNEY'S COSTS AND PERSONAL EXPENSES¹

Petitioner, Charlotte Kemper (Ms. Kemper), as natural guardian of her son, Sullivan Kemper (Sullivan), seeks an award of attorneys' fees, attorneys' costs and personal expenses as defined by General Order No. 9 for an action that she pursued successfully under the National Vaccine Injury Compensation Program.² Ms. Kemper filed an initial application for attorneys' fees and costs on October 23, 2006. She requested \$44,737.93. *See* Application for Attorneys' Fees & Costs (Fee Petition), filed October 23, 2006, at 2.

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

Ms. Kemper received Program compensation. Therefore, the Act mandates the award of “reasonable attorneys’ fees” and “other costs.” § 300aa-15(e)(1). Nevertheless, respondent contested two aspects of the Fee Petition. *See generally* Respondent’s Opposition to Petitioner’s Application to Attorneys’ Fees and Costs (Opposition), filed December 4, 2006. First, respondent charged that the hours that M. Reed Knight, M.D. (Dr. Knight), one of Ms. Kemper’s experts, claims “are excessive.” Opposition at 2. Second, respondent maintained that the hours that Mark R. Geier, M.D. (Dr. Geier), “identified as a ‘consultant,’” *id.* at 5, claims are not “reasonable or necessary.” *Id.* at 7. Thus, respondent invited the special master to “exercise his discretion” to reduce Dr. Knight’s hours and to deny Dr. Geier’s hours. *Id.*

The special master convened an informal, yet substantive, status conference on January 19, 2007. He provided comprehensive guidance concerning the parties’ disputes about an appropriate award of attorneys’ fees, attorneys’ costs and personal expenses as defined by General Order No. 9. On January 24, 2007, Ms. Kemper amended her Fee Petition. *See generally* Joint Status Report (JSR), filed January 24, 2007. Ms. Kemper requests now \$41,087.93. *See* JSR at 1. Respondent does not object. *See id.*

The special master has considered carefully the record as a whole. He determines that an award of \$41,087.93 in attorneys’ fees, attorneys’ costs and personal expenses as defined by General Order No. 9 is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Ms. Kemper’s favor for \$41,087.93. The judgment shall provide that Ms. Kemper’s attorney of record, Clifford J. Shoemaker, Esq. (Mr. Shoemaker), may collect \$40,662.46 from Ms. Kemper.³ Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send Ms. Kemper’s copy of this decision to Ms. Kemper by overnight express delivery.

John F. Edwards
Special Master

³ \$41,087.93 - \$425.47 for Ms. Kemper’s personal expenses as defined by General Order No. 9. *See* JSR at 1.